

Seattle Community Police Commission

Policy Recommendations

Bias-Free Policing | Stops and Detentions | Use of Force | In-Car Video Recordings

November 15, 2013



Seattle
Community
Police Commission

Our city. Our safety. Our police. **Better together.**

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Cover Memo

November 15, 2013

We are pleased to present this report, which details the Seattle Community Police Commission's policy recommendations on bias-free policing, stops and detentions, use of force and in-car video recordings. The Commission's policy recommendations in these areas will support the Seattle Police Department in reducing incidents of bias and excessive or inappropriate use of force.

While Commission membership is diverse, it cannot alone represent the perspectives of Seattle's many communities. For this reason, the Commission conducted extensive outreach to community members during October to gain insight about their perceptions of and experience with Seattle police, and to learn their views about its draft policy recommendations. The Commission was particularly interested in gaining an understanding of the views of people in Seattle who have traditionally not had a voice and who may have substantial concerns with police practices, including communities of color, people who are homeless, immigrants and refugees, youth, people who are mentally ill, persons with substance abuse problems and members of the LGBT community.

During October, more than 140 meetings were held across the city. Many of these meetings were hosted by 13 contracted community partner organizations that coordinated their efforts with other agencies. These partners helped the Commission reach deeply into many of the communities the Commission sought to hear from. Other non-contracted organizations also participated by hosting meetings with their constituencies. In addition, Commission representatives met with and briefed neighborhood and crime prevention councils, and police advisory groups. Commission members also met with police union representatives to obtain their views.

The Commission notes from its meetings with police officers widespread confusion and lack of information among officers expected to adopt and implement policy changes. The Commission would like to work with the Seattle Police Department leadership on ways to more effectively involve all police personnel in the reform process. For change to be sustainable, police department leadership must increase their efforts to involve their staff in the change process.

Feedback from the outreach effort came in two forms. Many participants (2,952) completed a survey that asked questions concerning the specific policy areas, as well as about perceptions and experience with the Seattle Police Department. Meeting facilitators also captured comments, observations and suggestions from meeting participants about the draft policy recommendations and noted other ideas and concerns, and perceptions of and experience with the police department.

A critical finding is an apparently strong endorsement of a number of important elements associated with the Commission's policy recommendations. Well over 75% of those completing surveys believe these steps may, or will, make a difference in improving the performance of the Seattle Police Department.

Both the qualitative and quantitative feedback informed the final policy recommendations and will provide guidance to the Commission in its future work. The feedback did not result in revisions to the CPC's draft recommendations because it was found to be generally supportive of the CPC's policy direction. In some cases, the feedback points to other critical components of each policy topic area—the need for hiring diversity in the police department, for public education, and for improvements in training, supervision and accountability within the police department.

To build public confidence in the reform process, it is critical that the views of the community are heard and considered. We deeply appreciate the involvement of community members in the recent process and found their observations instructive.

This first report focuses on specific policy recommendations and the community feedback associated with those recommendations, but we are still analyzing the data (both survey results and key themes) received from the community engagement activities.

A second report will be issued in January 2014 that provides a more thorough and complete summary of the October 2013 community engagement results. Some quantitative data are still being compiled. Also, in order to ensure the final community engagement report accurately reflects the perspectives of participants, the Commission will hold meetings in December to review the preliminary results with those who conducted meetings in October. The information we receive from partner organizations in these follow-up meetings may also result in revisions to our final representation of "key themes" expressed by community members.

There is still much more to learn from what we've been told, but we know the perspectives and ideas of the thousands who responded will help guide the Commission, the Seattle Police Department, and the City of Seattle in adopting new policies and approaches to improve the police department and build community trust in it.

Sincerely,

The Seattle Community Police Commission

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Overview

The Seattle Police Commission charge

The Seattle Community Police Commission (CPC) was established to provide community input on the Seattle Police Department (SPD) reform process and reform proposals. A Memorandum of Understanding (MOU) between the City of Seattle and the U.S. Department of Justice (DOJ) details the CPC's responsibilities. During the first year of the settlement agreement, the CPC was charged with assessing and making recommendations on SPD policies concerning bias-free policing and stops and detentions. The federal Monitor overseeing the reform process also asked that the CPC weigh in with recommendations concerning in-car video recordings. The federal court agreed to the CPC's request to grant it time to comment on a proposed use of force policy drafted by SPD and the DOJ. This report summarizes the CPC's policy recommendations and, except for use of force, includes specific draft language the CPC proposes in each policy area.

The policy development process

The CPC established workgroups to consider possible policy recommendations. For bias-free policing and stops and detentions, the workgroups reviewed policy drafts developed by SPD and crafted revisions to those drafts. Representatives from SPD and the DOJ, and other entities attended many of the workgroup meetings, answering commissioner questions and collaborating with workgroup members in resolving outstanding issues. For example, SPD staff, staff from the City Auditor's office and the Civilian Auditor of the Office of Professional Accountability provided technical expertise that informed workgroup judgments about issues on in-car video recording policy. Both SPD and DOJ representatives were available to answer questions regarding other policy areas; and the bias-free policing workgroup met with SPD representatives to discuss issues associated with measuring outcomes associated with the bias policy related to disparate impact. The Commission particularly appreciated the involvement of the Seattle Human Rights Commission in developing its policy proposals on in-car video recordings.

The workgroups met between April and September to develop policy proposals. Draft policies were adopted by the CPC as a whole on September 20, 2013, with the understanding that final policy recommendations would be adopted only after the public had an opportunity to comment. The CPC took into account public feedback received during its community engagement process in October 2013 before adopting final recommendations on November 13, 2013. A final and full report on the community engagement process and the results from it will be issued in January 2014.

Current policy areas

The DOJ's investigation of SPD found a pattern or practice of constitutional violations regarding the use of force that results from structural problems, as well as serious concerns about biased policing. These key findings are a significant reason the CPC wanted to assess SPD's proposed policies in these areas. The rules governing when police may stop and detain people are important since being able to move freely and not be subject to unwarranted searches and seizures is a critical constitutional right. For this reason, the CPC was particularly interested in making sure SPD policies on stops and detentions are legitimate, and provide clarity to officers and to the public with respect to officer and citizen obligations and rights. Finally, in-car video recordings are an important tool for evaluating controversial incidents and providing

training to officers. However, they have not always been reliably available. The CPC has weighed in with recommendations to ensure the effective in-car video technology is in place and with recommendations to adopt in-car video recording policies that support appropriate officer training and police department accountability.

Upcoming policy areas

In 2014, the CPC will review and make recommendations related to proposed procedures involving police officer supervision and training on policies concerning bias-free policing, stops and detentions, use of force and in-car video recordings. The CPC will also review and make recommendations related to crisis intervention policies, data collection and training. A major area of focus for the CPC in 2014 will be its review of the Seattle police accountability system, and developing recommendations for its reform.

Next steps

This report of the CPC policy recommendations on bias-free policing, stops and detentions, use of force and in-car video recordings is being distributed to the parties of the settlement agreement on November 15, 2013.

At that time, these policy recommendations will also be released to the federal Monitor, the Mayor, the Mayor-elect, the City Council, the Chief of Police, the City Auditor, the OPA Director and Civilian Auditor, and to the chairs of the Seattle Human Rights Commission.

A full report of the CPC's community engagement outreach process in October 2013 and what was learned during that outreach effort will be issued in January 2014. This report will provide more details of the questionnaire results, including responses by demographic segment. It will also provide final documentation of "key themes" surfaced by participants that will be refined following conversations with community partners in meetings to be held this December.

Some themes identified thus far point to other critical components of each policy topic area—the need for hiring diversity in the police department, for public education, and for improvements in training, supervision and accountability within the police department:

- Many believe police bias can be reduced by hiring more officers from diverse backgrounds and by having officers not just police, but engage more with the communities they serve.
- Community members also suggested that SPD exercise care in who they hire (not only ensuring more diversity, but that those hired have the appropriate personality for the job) and provide adequate ongoing support of officers to ensure they receive counseling and have coping skills to deal with high stress jobs.
- There was significant support for cultural competency and racial equity training of officers, and for considering involving the community in designing and possibly leading some of this training; and cultural competency training should include addressing bias involving gender-identity, age, disability, poverty; and there was an interest in ensuring mandatory training of officers to deal with those in crisis. Fully 85% of the CPC survey respondents think mandatory racial bias/racial equity training may, or will, make a difference in improving SPD performance.

- Many community members have a strong desire for public education and tools so that individuals will understand and be able to assert their rights during a stop and/or detention—many indicated they do not know their rights when stopped by the police.
- There was support for officer training on use of force and de-escalation tactics, and some thought officers should receive refresher training regularly. Some community members mentioned the need for officers to receive training on how to de-escalate situations (including the importance of showing respect); in some situations they can mitigate use of force if they have training in cultural competency and skills in dealing with people in crisis, including those with mental illness and substance abuse issues.
- Some concern was expressed about whether there are sufficient penalties when officers use excessive force; mention was made of the need to repeal state law that allows officers to claim a justified homicide defense.
- Many expressed the view that individuals should have the right to document incidents with their own devices and that police should not interfere and/or they should notify people of that right; a number of community members also thought there was value in requiring police to use body cameras (for example, this might be useful for officers on horses or foot, or who use bikes and Segways).

SPD and the DOJ jointly submitted a draft policy on use of force in August and the federal Monitor has tentatively approved it. The CPC believes substantial revisions to that policy may be in order, and next week will discuss possible revisions with the DOJ, the police department, and Sue Rahr, the Executive Director of the Washington State Criminal Justice Training Commission.

The police department will take under advisement the CPC policy recommendations prior to completing its draft policies on bias-free policing, stops and detentions and in-car video recordings. On December 31, 2013, the federal Monitor will make his recommendations to the federal court on whether to approve those draft policies, depending on his judgment as to whether the policies meet the requirements for achieving reform under the settlement agreement. The federal court will ultimately decide whether to accept or reject the Monitor's recommendations.

Policy Recommendations Overview

Bias-Free Policing

The need for change

Some people, particularly people of color, are disproportionately affected by law enforcement. Issues of unequal treatment involving stops, arrests and use of force are especially troubling. In some cases, this may be the result of *intentional* bias, but it also can be the result of *unintentional bias* in systems and institutions. Both types of bias may cause police to treat people differently, which may be counterproductive and unfair. The problem is widely recognized in our community—the 2011 SPD Community Survey reported that 63% of Seattle respondents believed racial profiling was a problem for the Seattle Police Department.

What we learned about biased policing through the CPC community engagement process in October 2013

The following are key survey results and themes raised by those who participated in the October Community Police Commission sponsored community discussions about Seattle police. Results from the CPC questionnaire are expressed as percentages, while comments from participants are reported as observations, but not quantified.

- The 2013 CPC community outreach survey found that only 25% of respondents agree that SPD treats people of all races and ethnicities equally.
- By very large margins, survey respondents believe the police engage in racial profiling (70%) and treat people differently because of their race (73%).
- Over half of the survey respondents identified specific groups not being treated by the police as well as others, most by significant margins. The percentage of respondents who think members of these groups are not treated as well as others is shown in parentheses: African Americans (72%); people with criminal records (68%); Latinos or Hispanics (68%); people who are homeless (66%); people with mental illness or drug/alcohol problems (65%); Native Americans (60%); young people (56%); and people who are Islamic or Middle Eastern (51%). While not the majority, large percentages also thought members of the LGBT (42%) and Asian and Pacific Islander (41%) communities are not treated as well as others.
- Many believe officers lack understanding and tolerance of other cultures and customs (including youth culture) and may make unfair judgments. Some examples include:
 - ✓ People who are homeless and young people are unfairly judged as drug/alcohol users or gang members based on status or how they look or dress;
 - ✓ People who are homeless are treated as second class citizens;
 - ✓ Non-gender conforming people are unfairly targeted; and
 - ✓ People are judged uncooperative when language barriers are present.
- Participants pointed out that police bias is also demonstrated by bullying or intimidation, anger, use of slurs, disrespect, rudeness, meanness and insensitivity, generally and towards certain groups.
- Some reported that officers are sometimes unfair or unresponsive in how they respond to certain crime victims (minority business owners, sex workers, domestic violence victims in same-sex relationships, homeless or addicted people); and 64% of survey respondents believe not all areas of Seattle are served equally by Seattle police.
- Most survey respondents (83%) believe that SPD documenting bias incidents and addressing the bias of individual officers may, or will, make a difference in improving SPD performance; some

expressed support for heavier penalties for violating the policy, including penalties with financial consequences (loss of pay).

- Specific policy feedback was not definitive on the question of whether officers should offer or be required to call a supervisor when a subject claims bias; while not definitive, many support the proposed disparate impact policy because we need to address bias at a system level.
- Most survey respondents (76%) believe SPD reporting data by race and national origin and progress in reducing bias may, or will, make a difference in improving SPD performance; there is also support for measuring results through community satisfaction surveys that provide demographic information about respondents. Support was also expressed for documenting and tracking all types of stops and detentions, and reporting the demographics of those stopped and arrested in order to identify groups that may have been stopped disproportionately.

Bias-free policing recommendations

The policy recommendations seek to address both individual and institutional bias in SPD (when officers are unfair in their treatment of a person *and* when SPD practices negatively impact a group or groups of people). The changes are intended to lessen the number of incidents involving both types of bias. Both approaches will better ensure equity in police services, increase SPD effectiveness, and will help build mutual respect and trust between SPD and our diverse communities.

Types of bias

Institutional/Intentional

- Policies which explicitly discriminate against a group or groups

Institutional/Unintentional

- Policies that negatively impact one or more groups unintentionally

Individual/Intentional

- Prejudice in action - discrimination

Individual/Unintentional

- Unconscious attitudes and beliefs

Recommendations related to individual bias

Individual bias may be intentional or unintentional, in either case changing behavior and changing attitudes is essential. Under the CPC's proposed policy:

- Officers shall not make decisions or take actions that are influenced in any way by bias, prejudice or discriminatory intent. Bias cannot be expressed verbally, by gesture or in writing.
- Officers are required to take into consideration relevant characteristics in determining appropriate services or police procedures designed for such individuals (e.g., in responding to those who are mentally ill, homeless, or are under the influence of alcohol or drugs).
- Officers and supervisors are subject to discipline for engaging in, ignoring or condoning bias.
- The Chief of Police reinforces the policy in periodic updates and annual training.

Key provisions related to individual bias:

- Protected classes are those identified in current civil rights laws.
- Officers may not express bias in direct or less direct ways (action, verbally, gesture, writing).
- Discipline for bias is provided when officers engage in bias, but also when officers ignore or condone it.
- Supervisors must respond to the scene of bias complaints when asked.
- Employees who provide information about bias incidents are protected from retaliation.

Recommendations related to institutional bias

Institutional bias may be intentional or unintentional, and in either case changing policy, institutional culture and measuring outcomes are essential. The CPC's proposed policy:

- Commits the department to attempt to find alternatives to policies and practices that have an unnecessary negative impact on some groups of people.
- Focuses on broad institutional practices and the consequences of those practices, not the behavior of individual officers.
- Requires data collection and annual reporting on unequal impact in resource deployment and other practices.

Key provisions related to institutional bias:

- Protected classes are those identified in current civil rights laws.
- SPD collects and evaluates data by race, national origin and other categories for evidence of disparate impact; it issues an annual report on the data it has collected and evaluated.
- The SPD annual report provides the basis for exploring alternatives (police practices, revisions in the law, prosecution standards, etc.) that could have a less disparate impact while being equally effective.

Stops and Detentions

The need for change

One of the most important freedoms guaranteed by the Constitution is the ability to move freely and to not be subject to unwarranted searches and seizures. In order to ensure that there is strong support and confidence by the public in their police officers, it is critical that officers do their work without bias and within the parameters of the Constitution. The DOJ investigation concluded that SPD policies and training failed to clearly explain when an officer may legally stop, detain or search people short of arrest, and it found that these policies created the risk that SPD officers would make illegal stops and searches. The problem is recognized in our community—the 2011 SPD Community Survey reported that 46% of Seattle respondents believed there is a problem with the SPD stopping people without good reason.

What we learned about police stops through the CPC community engagement process in October 2013

The following are key survey results and themes raised by those who participated in the October Community Police Commission sponsored community discussions about Seattle police. Results from the CPC questionnaire are expressed as percentages, while comments from participants are reported as observations, but not quantified.

- More than half of the survey respondents (54%) think police stop people on the street or in public places without good reason, and 51% believe police stop people in cars without good reason.
- Many community members believe officers stop some people unfairly due to racial profiling, prejudice, ignorance of cultural customs, or for no valid reason.
- Many community members believe some officers stop, detain and search people without offering any explanation of the reason for the stop.
- Stops are particularly difficult for people with limited English proficiency since interpretation services are often unavailable.
- Many officers don't seem to understand the limits of their authority to stop and detain. Some officers cross the line and presume guilt. Some officers become hostile when individuals assert their rights. Some officers will detain a person for a long period and then release that person with no apology or explanation.
- Most survey respondents (85%) believe ensuring officers are clear on when they are allowed to stop or detain someone, and how they are to conduct themselves during stops may, or will, make a difference in improving SPD performance.
- A similar percentage of survey respondents (87%) believe ensuring community members are clear on when officers are allowed to stop or detain them, and know their rights and obligations may, or will, make a difference in improving SPD performance.
- Many community members support the intent of the policy recommendations, although they would like greater clarity about when stops are allowed. Some of this clarity can be provided in officer training which community members strongly supported; there was also interest in having an on-going dialogue with SPD about its progress in training in this area.
- Community members want officers held accountable if they violate these policies.
- As referenced under the bias-free policing policy section, support was expressed for documenting and tracking stops in order to identify patterns of disproportionate treatment of groups.

Stops and detentions policy recommendations

- Explains the different stops officers may make and how voluntary and non-voluntary stops differ.
- Describes what officers may and may not do during non-voluntary stops.
- Explains that officers must identify themselves and tell the person why they are being detained if it's a non-voluntary stop. Officers may hold individuals for only as long as necessary.
- Explains when an officer may frisk or pat-down a detained person for weapons.
- Requires officers to report all non-voluntary stops for review and to detect patterns of discrimination.

Use of Force

The need for change

A pattern of using unnecessary or excessive force was a key finding of the DOJ's investigation of SPD. The DOJ found reason to believe that excessive force was disproportionately an issue in cases involving people of color, and that force too often was used when it was not warranted or to an unwarranted degree. The DOJ also found reason to be concerned about force used against people with mental illness or under the influence of drugs or alcohol. The problem is recognized in our community—the 2011 SPD Community Survey reported that 72% of Seattle respondents believed there was a problem with SPD using excessive force.

What we learned about use of force through the CPC community engagement process in October 2013

The following are key survey results and themes raised by those who participated in the October Community Police Commission sponsored community discussions about Seattle police. Results from the CPC questionnaire are expressed as percentages, while comments from participants are reported as observations, but not quantified.

- A significant percentage of survey respondents (60%) think police use excessive physical force, and significant concern was expressed that police too often resort to force unnecessarily.
- A fair number of African American individuals either had first-hand knowledge or knew someone who had experienced excessive use of force; there is deep pain and concern about excessive use of force against members of the Native/Urban Indian community; and street youth and those in the homeless community think there are too many incidents of excessive force in these communities including physical force, drawn weapons and the use of mace/tasers.
- Some report officers taunting, using “bullying” tactics, going on “power trips,” and using verbally abusive and offensive language, all of which escalates situations.
- A large percentage of survey respondents (86%) believe requiring officers to report use of force, and review and investigate these cases in more instances may, or will, make a difference in improving SPD performance.
- A similarly large percentage of survey respondents (88%) believe training officers to use conflict reduction with the goal of reducing use of force may, or will, make a difference in improving SPD performance.
- Many commented that it was difficult to provide feedback on the cumbersome proposed policy and that more clarity was needed, but support was expressed for reporting and investigating use of force incidents; some thought “minimal” use of force incidents should also be reported and investigated.
- There were several specific suggestions: 1) pointing a gun should not be classified as a Type I use of force; it should be classified in a more serious category since it is tied to the potential intent to shoot; 2) once a person is handcuffed, force should be minimal; interpreters should be called in prior to using force whenever possible when dealing with limited English proficient individuals.

Use of Force policy changes proposed by SPD

- Explains when force may be necessary and reasonable, and emphasizes using skills to reduce conflict (de-escalation skills) if possible, to avoid the use of force.

- Identifies four levels of force and provides that all cases involving force—with the exception of those involving minimal force—must be reported and either reviewed by a supervisor or subject to a formal investigation.
- Details when officers may use weapons. Weapons must be authorized and officers must be trained and approved to use them.
- Explains when supervisors can or must refer use of force complaints or investigations to the Office of Professional Accountability (the office responsible for reviewing incidents of possible officer misconduct).

Use of force policy recommendations

The CPC has reviewed the proposed use of force policy and believes the proposed policy requires substantial revision. It is critical that this policy be clear, consistent and concise—for both officers and the public, it is important that the policy is accessible and transparent.

- The proposed policy is unnecessarily long (70+ pages) and is difficult for both officers and the public to understand;
- The structure and order of topics in the proposed policy are unclear, inconsistent and redundant;
- Some of the definitions in the proposed policy are vague and/or conflict with state law and established court rulings; and
- Some of the conventions used in the policy are vague and confusing.

The Commission does not at this time offer specific use of force policy recommendations. However, because it believes substantial revisions to the draft policy may be in order, next week the CPC will discuss possible revisions with the DOJ, the police department, and Sue Rahr, the Executive Director of the Washington State Criminal Justice Training Commission. The CPC will consider the community feedback it received on the original use of force draft policy in finalizing its recommendations in this area prior to the Monitor's deadline of November 30, 2013.

In-Car Video Recordings

The need for change

In-car video (ICV) recordings have not always been reliably available, or of usable quality to confirm or contradict written police reports or witness observations of controversial incidents. They also have not always been reliably available due to a combination of department policies and technological limitations and challenges. Policy and training related to ICV have not always been clear.

With the implementation of a new COBAN Technologies ICV system, the CPC was presented with an opportunity to review and make significant recommendations regarding ICV system capabilities, general ICV policies, ICV training plans and curricula, and the ICV accountability system.

What we learned about in-car video recordings through the CPC community engagement process in October 2013

The following are key survey results and themes raised by those who participated in the October Community Police Commission sponsored community discussions about Seattle police. Results from the CPC questionnaire are expressed as percentages, while comments from participants are reported as observations, but not quantified.

- Several high-profile incidents where ICV recordings were unavailable or unusable have led to community skepticism regarding how SPD records, uses and retains ICV footage.
- Some community members believe officers move relevant interactions outside of the range of cameras to avoid recording; some believe ICV footage is intentionally lost, tampered with or destroyed by SPD in order to protect officers.
- Some believe officers deliberately disregard SPD policies and procedures regarding ICV since there is little, if any, consequence to the officer when those policies and procedures aren't followed.
- A large percentage of survey respondents (86%) believe making cameras in police vehicles automatically record more often may, or will, make a difference in improving SPD performance. Many think increased use of ICV will help increase public trust of SPD, make people feel safer, help to reduce bias and use of force, increase officer professionalism, and support officer training and accountability.
- Many community members expressed a belief that vehicle cameras should be on all the time (and, due to skepticism, wanted more information about when exceptions might be allowed under the proposed policy); generally, they are not in favor of officer discretion. Community members also indicated support for requiring officers to notify people when the camera is "on" (which is already the policy).
- Given community concerns, and in some cases lack of knowledge of SPD recording policies, there is a value in looking for opportunities to better educate the public on the operation, benefits and limits of ICV as an accountability tool.
- While recording was widely supported, some also expressed concern about maintaining privacy and thought the policy on recording should address this difficult issue.
- Many community members expressed support for an effective accountability system to ensure compliance with ICV policies.

The ICV policy recommendations

The CPC's goals in making these ICV policy recommendations were threefold. First, to maximize the opportunity for appropriate audio/video recording of SPD and citizen interactions, without impacting officer or public safety (e.g., minimize officer discretion in ICV triggers during emergent situations). Second, to focus on proper and complete evidence gathering, and video search ability and retention without sacrificing constitutionally protected officer and public privacy. Finally, to review the cost/benefit equation of adding elements to the newly installed COBAN ICV system, balancing the need to obtain the most consistent, useful and searchable information within budget constraints while recognizing other pending priorities. For example, creating or retaining too much video can significantly increase cost but add little value to the accountability process.

The CPC recommended changes are consistent with the new COBAN in-car video capabilities SPD has in place effective October 1, 2013:

- The new system features "single sign-on" at ignition to activate the ICV system, but does not initiate recording. This saves an officer a step (and time) from having to turn on and wait for the computer to "boot". Once the vehicle is on, the officer will simply tap his or her badge and log-in.
- Automatic video recording is activated by several "triggers": patrol car lights, audio activation, in crash situations, and at certain speed thresholds. (The CPC did not recommend additional video triggering by door, siren or rifle lock release, or via GPS, as these would generate unneeded or redundant video at significant expense. For example, sirens are rarely if ever used without lights, so videos triggered by lights will cover any situations involving sirens.)
- A new video retention schedule of 1,280 days, concurring with City Auditor.
- The audio system must be on whenever ICV is on, with few exceptions.
- If an event that should have been recorded is not recorded, the officer must explain in the incident report why it was not recorded.
- SPD needs to appoint a single command level leader responsible for complete oversight of all aspect of ICV, including installation, use and maintenance, data storage and auditing, training and supervisory use.
- SPD needs a fully documented plan that explains how the Department will monitor proper use of ICV and ensure supervisory oversight, particularly via sergeants and captains. This should be reviewed and updated annually.
- SPD needs a fully documented training plan that explains how and when all officers will be trained on the new system, and will ensure video quality, along with "refresher" courses over time. This should be reviewed and updated annually.
- SPD needs to develop a standard electronic request form for the public that includes all the information the Video Unit needs to conduct at citizen request. Also, the Video Unit must develop a simple, uniform system for recording receipt and work performed on each request
- SPD should give COBAN database access (the ICV database) to staff in additional SPD units (PDU, OPA), the OPA Auditor and the City Attorney – with appropriate training, supervision and security controls.

In coordination with the federal Monitor, we are awaiting detailed plans from SPD related to ICV supervision, monitoring and training. SPD was unable to meet the timeframe of our original request for these plans (October 30, 2013). The plans are now scheduled to arrive November 30, 2013 and will require the CPC's further review.

In the future, the CPC plans to engage in other policy areas involving police recordings, especially in light of the community feedback we have received. The SPD Body Camera pilot is scheduled for 2014, and CPC will want to review it extensively. It is also clear that the use of video—whether police recording using ICV and body cameras, or the public recording using cell phones and cameras—is a topic that deserves and requires ongoing community conversation and input.

Policy Recommendations

Bias-Free Policing Policy Recommendations

This is the specific policy language recommended by the CPC for bias-free policing

Introduction: The Seattle Police Department Is Committed to Bias-Free Policing

The Seattle Police Department is committed to providing services and enforcing laws in a professional, nondiscriminatory, fair, and equitable manner.

Bias-free policing is policing that is free of discriminatory effect as well as discriminatory intent. It will increase the Department's effectiveness as a law enforcement agency and build mutual trust and respect with Seattle's diverse groups and communities.

The Seattle Police Department works to not only ensure equality in policing, but to promote equity in policing. The goal of the Department's policy is to ensure the best policing practices for all communities based on their particular public safety needs. The goal is to also ensure equity in police services for all communities.

1. Disparate Impact

The Seattle Police Department is committed to eliminating policies and practices that have an unwarranted disparate impact on certain protected classes.

We anticipate that in the short term, despite our best efforts and intent to eliminate bias in policing, the long term impacts of historical inequality and institutional bias could result in disproportionate enforcement, even in the absence of intentional bias. The Seattle Police Department's policy is to identify ways to protect public safety and public order without engaging in unwarranted or unnecessary disproportionate enforcement.

If periodic analysis as directed by this Policy suggests that disproportionate enforcement is occurring, the Seattle Police Department will consult with community groups such as the Community Police Commission to explore equally effective alternative practices that would result in less disproportionate impact, and will report those proposals annually to the Mayor and to the City Council.

This Disparate Impact section of the Bias-Free Policing Policy will not be a basis to impose discipline against any employee of the department, other than the Chief of Police.

This Policy prohibiting unwarranted disparate impact will be implemented through data collection; periodic reporting to the Mayor, City Council and to the Community Police Commission; and policy revision, as provided in Appendix B and as developed in accordance with that Appendix. Initially, disparate impact analysis will focus on the classes protected by Title VI of the Civil Rights Act (race, color, national origin), as the Department is already obliged to comply with the regulations implementing Title VI by virtue of accepting Justice Department funding. The Department will consult with the Community Police Commission about whether to examine disparity with respect to other classifications, after protocols for identifying unnecessary disparity have been developed in the context of the classifications in the Civil Rights Act of 1964.

This section on disparate impact is not intended to create a private right of action to enforce its terms.

2. Employees May Not Engage In Bias-Based Policing

Bias-based policing is the different treatment of any person by officers motivated, in whole or in part, by the subject’s status as a member of a protected class or the other characteristics listed below.

Officers shall not make decisions or take actions that are influenced in any way by bias, prejudice, or discriminatory intent. Law enforcement and investigative decisions must be based upon observable behavior or specific intelligence, which forms the basis for, among other things, determinations of reasonable suspicion and probable cause.

Officers shall not express—verbally, in writing, or by other gesture—any prejudice or derogatory comments concerning race, religion, national origin, gender identity, sexual orientation, or other personal characteristics.¹

3. The Characteristics of an Individual May Be Appropriately Considered in Limited Circumstances

Officers may take into account the race, ethnicity, age, gender or other personal characteristics of an individual in establishing reasonable suspicion or probable cause only when the characteristic is part of a specific suspect description based on trustworthy and relevant information that links a specific person to a particular unlawful incident.

Officers must be prepared to articulate specific facts and circumstances that support their use of such characteristics in establishing reasonable suspicion or probable cause.

Officers are expected to consider relevant personal characteristics of an individual when determining whether to provide services or utilize tactics or procedures specifically designed for individuals with those characteristics (e.g. mental illness, homelessness, addictions, etc.).

4. The Bias-Free Policing Policy Includes All Protected Classes and Other Group Characteristics

This policy applies to the characteristics of all protected classes under state, federal, and local laws as well other discernible characteristics of an individual. Such characteristics include, but are not limited to, the following:

Race, ethnicity, or color	Familial status
Religion	Disability status
National origin	Veteran status
Gender	Political ideology
Age	Economic status
Mental illness	Sexual orientation
Homelessness	Gender identity
Use of a motorcycle or motorcycle-related paraphernalia – RCW 43.101.419	

¹ CPC is open to SPD’s suggestion to cross-reference Policy 5.001 on derogatory language here, and to align the provisions of the two policies

5. All Employees Share Responsibility for Preventing Bias-Based Policing

Every employee is responsible for knowing and complying with this policy.

Supervisors, commanders and civilian managers have an individual obligation to ensure the timely and complete review and documentation of all allegations of violation of this policy that are referred to them or of which they should reasonably be aware.

The Chief will reinforce that bias-based policing is unacceptable through specific yearly training, regular updates, and such other means as may be appropriate.

6. Officers Will Not Engage in, Ignore, or Condone Bias- Based Policing

Officers or supervisors who engage in, ignore or condone bias-based policing as provided in this policy will be subject to discipline.

Officers who have observed or are aware of other officers who have engaged in bias-based policing shall specifically report such incidents to a supervisor, providing all information known to them, before the end of the shift during which they make the observation or become aware of the incident.

Supervisors who fail to respond to, document and review allegations of bias-based policing will be subject to discipline.

No employee shall retaliate against any person who initiates or provides information or testimony related to an investigation, prosecution, OPA complaint, litigation or hearings related to the Department or Departmental employees, regardless of the context in which the complaint is made, or because of such person's participation in the complaint process as a victim, witness, investigator, decision-maker or reviewer.²

See SPM Section 5.001—Standards and Duties (Will link to manual section once 5.001 revision is complete.)

7. Supervisor Will Respond to Complaints in Person When Requested

If a person raises the issue of whether he or she is the subject of bias-based policing, the officer shall offer to call a supervisor to the scene to review the circumstances and determine an appropriate course of action.

If the person wishes to speak with a supervisor about his or her biased-policing concerns, the officer shall immediately contact a supervisor who will respond to the scene and conduct an investigation.

If the person declines to speak with a supervisor or leaves before the supervisor arrives, the officer will offer the person the supervisor's contact information so the person may report the circumstances of the allegation, and information on how to file a complaint with the Office of Professional Accountability.

² The CPC is open to SPD's recommendation to cross-reference here the SPD anti-retaliation policy in 5.001, but supports the addition of this to broaden the scope of both policies.

In every case where there has been an express or implied allegation of bias-based policing, the officer will document the circumstances of the allegation and all steps that were taken to resolve the allegation. This documentation must include the person's name, address, telephone or cell phone number, or email address if the person is willing to provide such information; and contact information for any civilian witnesses who observed the events, if they will provide it.

All reports involving an allegation of bias-based policing must be reviewed and approved by a supervisor before the officer leaves at the end of the officer's shift. If the supervisor did not discuss the incident with the complainant at the scene, the supervisor shall contact the complainant at his or her earliest opportunity to determine whether further review and fact gathering is needed.

Officers may detain an individual only as long as they have a lawful reason, and may not extend a detention solely to await the arrival of a supervisor.

See 5.140–PRO-1 Investigation of Bias-Based Policing Allegation for further detailed direction.

PROCEDURE FOR INVESTIGATION OF BIAS-BASED POLICING IS AVAILABLE IN APPENDIX A

8. An Annual Report Will be Prepared for the Chief of Police and the Public

This report shall describe and analyze the year's bias-based policing complaints and the status of the Department's effort to prevent bias-based policing, including both intentional bias, and unwarranted disparate impact. The research supporting the disparate impact components of the report shall be designed after consultation with the Community Police Commission. After review by the SPD command staff, and after names of individual officers have been removed, this report will be made available to the community.

PROCEDURE FOR THE ANNUAL REPORT IS AVAILABLE IN APPENDIX B

APPENDIX A

5.140-PRO-1 Investigation of Bias-Based Policing Allegation

Officer or other employee

1. **Receives** an express or implied allegation of bias-based policing; and
- 2a. **Notifies** their sergeant.

OR

- 2b. If the officer's sergeant is not available, **notifies** any sergeant from the officer's precinct. If no sergeant is available, notifies a lieutenant or above who then either assigns a specific sergeant or who shall personally respond to conduct the same review as would have been required of a sergeant had one been available.

Sergeant or next level supervisor

3. **Responds** to the scene.
4. **Gathers** all relevant information from witnesses and from the complainant, unless the complainant has left or remains but chooses not to speak to a supervisor at that time. Relevant information is defined as any information that may tend to explain, prove, or disprove the allegations being made. The information may include but not be limited to the following:
 - Subject and witness contact information;
 - Written or audio statements from the subject and witnesses, conducted on the in-car video system if a patrol car is present, unless safety or an investigation would be compromised, unless the individual being interviewed wishes to make her or his statement off video;
 - The sergeant should take the subject's statement in a separate location from the involved officer(s);
 - Any in-car video or audio recordings, or other video. Any in-car video shall be uploaded before the end of the involved officers' shift and the absence of any such in-car video shall be documented and explained;
 - Ensures that the involved officer writes a GO if it would be necessary apart from the bias allegation. The bias allegation will be documented in a format to be determined.

If the complainant has remained at the scene and is willing to speak with the supervisor, the reviewing supervisor shall affirmatively ask the complainant if she or he believes there may have been misconduct or if they would like the matter to be referred to OPA for investigation. The supervisor shall document the response and if the complainant asks that the matter be referred to OPA then the reviewing supervisor shall refer it.

If the complainant did not remain at the scene or did not wish to speak to the supervisor about the immediate complaint or incident, the supervisor shall make efforts to contact her or him by phone or letter and to interview her or him if the complainant is willing.

If any reviewing or approving supervisor determines that there may have been misconduct, that supervisor shall refer the matter to OPA for further investigation.

If the sergeant believes he/she has resolved the matter to the satisfaction of the subject and that no misconduct was involved, the sergeant will document the review and all facts leading him or her to believe that the matter has been satisfactorily resolved in a <format to be determined>.The Sergeant shall also recommend an appropriate disposition of the event.

That report must be reviewed and approved by a next level supervisor with a permanent rank of Lieutenant or above. That review must include a review of: The sufficiency of the reporting of the incident, the sufficiency of the review, and the appropriateness of the recommended disposition of the allegation.

The report must then be routed to the section commander for the same review and comment as for the Lieutenant.

The section commander must then route the report to the bureau chief for review and comment, and for approval and imposition of an appropriate disposition of the event. The report is then routed to the Chief for final review.

Each level may send the review or disposition back to a prior reviewer for further review, but must also send the original report on with the indication that it was returned for further review. The Chief or Deputy Chief of Staff shall review all reports that were returned for further investigation to determine if there are any issues of supervision in the review process.

Exact documentation format remains uncertain at this point, but will be:

- ***Electronic***
- ***Form-driven to address data collection needs***
- ***Specifically identify the steps necessary for a sufficient investigation***
- ***Include an electronic transmission and review/signoff procedure***
- ***Be designed to integrate with the larger data reporting system when that becomes operational. This system will include some reporting capability as well, to be determined.***

APPENDIX B

PROCEDURE FOR ASSESSING DISPARATE IMPACT OF DEPARTMENT POLICIES AND PRACTICES

This Appendix describes a data collection and analysis plan regarding disparate impact in Seattle policing. The procedure described is designed to achieve two main goals. First, the procedure will enable identification of SPD practices – including stops, citations and arrests – that have an especially disparate impact on particular racial or ethnic groups relative to the general population and to the White population. Second, the procedure outlines a method for identifying alternative enforcement practices that would reduce racial and ethnic disparities by either: a) addressing the targeted behavior in a different way; or b) de-emphasizing the practice in question (or both). The procedure also allows for the identification of practices that do not have disparate impact; analyses of these practices will yield important insights about ways that practices that do produce racial and ethnic disparities may be reformed.

The proposal focuses on enforcement practices that are not primarily driven by reports from crime victims, but rather are highly discretionary and hence amenable to reform. With respect to criminal offenses, these include arrests for: drug law violations, prostitution, disorderly conduct, obstructing a public officer, resisting arrest, trespass, driving offenses, pedestrian interference, and illegal camping. Civil infractions for jaywalking, drinking in public, public consumption of marijuana, and public urination will also be analyzed. Additional criminal and civil enforcement categories may be identified through analysis of existing arrest and infraction patterns. Police stops that do not lead to citation, arrest or criminal charges will also be analyzed.

The procedure involves six main analytic steps: 1) identifying the racial and ethnic composition of the persons stopped, cited or arrested by the Seattle Police Department for a relevant violation or offense; 2) calculating stop and arrest disparity indices that will facilitate comparative analysis; 3) comparative analysis to identify the practices that have the greatest (and least) disparate impact; 4) understanding the practices that do (and do not) produce disparities; 5) identifying possible alternatives and remedies for consideration by stakeholders; and 6) follow up analyses to ascertain whether alternatives that have been implemented reduce disparate impact and serve public safety goals. Each of these analytic steps is described below.

- 1) **Identification of the racial and ethnic composition of persons stopped, cited and arrested by the Seattle Police Department.** The first step in the process is the identification of the racial and ethnic composition of: a) persons who are stopped but not arrested by SPD; b) persons who are cited for one of the civil violations previously enumerated; and c) persons who are arrested for or charged with one of the criminal offenses identified previously.

Unfortunately, obtaining this information is not straightforward. The Seattle Police Department currently stores stop and arrest information in its Record Management System (RMS). However, it is not clear whether the RMS can generate stop and arrest data that is sufficiently refined. For example, it is uncertain whether the data generated by RMS will distinguish between drug possession arrests and drug delivery arrests, or include information about the type of police operation that generated a particular arrest. Moreover, it is not clear whether surnames can be produced by querying the RMS; as noted below, surnames are necessary in order to identify suspects' ethnicity.

Obtaining detailed stop and arrest data is crucial for identifying the specific enforcement practices that have highly disparate impacts. For this reason, information about stops and arrests will be acquired through *both* RMS and by individually coding of a sample of General Offense (GO) reports generated by SPD officers. These reports are filed by officers following a stop or arrest, and include information about the race of the suspect, as well as the specific offense(s) involved, the time, date, precinct, and location of the stop or arrest, and the type of operation involved. Similar information will be obtained regarding citations by individually coding a sample of the civil citations issued for the civil infractions identified as relevant. A sample of Seattle Police Department stop, citation and arrest data will be coded and compiled on an annual basis.

Because Seattle police officers are not asked to record the ethnicity of arrestees on GO reports, an additional step will be necessary to identify Latinos who are stopped, cited or arrested in Seattle. Specific, Hispanic Surname Analysis will be used to identify Latino/a persons who were the subject of SPD enforcement actions. Hispanic Surname Analysis allows analysts to estimate the proportion of people in a given sample who identify as Latino or Latina. This program utilizes the U.S. Census Spanish Surname database and assigns a numeric value between 0 and 1 to all surnames in that database. The list that will be used to identify defendants of Hispanic origin contains 12,497 different Spanish surnames that are classified by the Census Bureau as “Heavily Hispanic.” These numeric values are provided by the U.S. Census Department and represent the probability that a given surname corresponds to persons who identified themselves as Hispanic/Latino in the 1990 U.S. Census.

The procedure described above will enable the analyst to annually compile data regarding the race and ethnicity of those stopped, cited and arrested for specific offenses by the SPD. The next two steps described how these data will be analyzed in order to identify enforcement practices that have a comparatively pronounced disparate impact on particular ethnic and racial groups in Seattle.

- 2) **Calculating Disparity Indices.** The arrest and stop data will reveal the racial and ethnic breakdown of those stopped, cited and arrested for specific offenses in Seattle. In order to facilitate comparative analysis of these data, per capita stop, citation and arrest rates for particular racial and ethnic groups will be calculated. U.S. Census population data will be used to calculate these rates. These rates will reveal how many Asians, Pacific Islanders, Blacks, Latinos, American Indians and Alaska Natives, and Whites were stopped, cited or arrested for various offenses per 1,000 Seattle residents of each racial/ethnic group. Because some of the people arrested may reside outside of Seattle, these rates will not be exact, but will provide a useful estimate of the degree to which the practice in question is differentially affecting Seattle residents.

In addition, “disparity ratios” will be calculated. These ratios reveal to the extent to which a stop or arrest rate for each of the racial and ethnic groups other than Whites compares to the non-Hispanic White rate. For example, if the analysis reveals that 5 of every 1,000 Black Seattle residents, but 1 of every 1,000 White Seattle residents was arrested for drug possession, the disparity ratio would be 5, meaning that the Black drug possession arrest rate is five times higher than the White drug possession arrest rate. These disparity ratios will be calculated for stops, citations and arrests, and will facilitate the comparative analysis described below.

- 3) **Comparative Analysis of Disparate Impact:** The third step in the procedure is a comparative analysis of the degree of disparate impact in Seattle Police Department stops and arrests. The purpose of this analysis is to identify enforcement practices that produce relatively great disparities and may warrant further examination.

The comparative analysis will have two dimensions. First, the degree of disparity in Seattle stops, citations and arrests across offense categories will be analyzed. For example, comparison of the arrest disparity ratios across arrest categories may reveal that arrests for disorderly conduct have a significantly greater disparate impact than DUIs. Similarly, comparison of infraction ratios will enable identification of the kinds of civil infractions that have the greatest disparate impact. This analysis will thus identify specific offense categories that are characterized by high levels of disparity by Seattle standards.

However, it is possible that the disparity found in a particular category of stops or arrests is not high by Seattle standards, but is high relative to the level of disparity found in other jurisdictions. For example, the analysis may show that in Seattle, the Black DUI arrest rate is twice as high as the White DUI arrest rate, but that other arrest categories have higher disparity ratios. If disparities are assessed only by Seattle standards, DUI arrests would not be among those identified as have an especially disparate impact on Blacks. However, a Black-White disparity ratio of 2 in DUI arrests may be substantially greater than the Black-White disparity found in in DUI arrests in other jurisdictions. To the extent that this is the case, further investigation of the practices producing this disparate impact may be warranted.

A separate comparative analysis of the degree of disparity found in Seattle police stops and arrests *relative to the degree of disparity found in police stops and arrests in other jurisdictions* will therefore be conducted. The point of this exercise is not to create an artificial benchmark that the SPD would be required to reach, but rather to contextualize the patterns that characterize Seattle practices. Identification of jurisdictions with less disparate impact in particular enforcement areas will also be useful for identifying alternative practices that may help to ameliorate disparate impact.

The comparative analysis of disparity in police stops will compare Seattle stop disparity ratios to those found in other jurisdictions where stop data are collected as a result of consent decrees requiring the collection of such data. For arrests, the analysis will compare Seattle's arrest disparities with those found in other mid-sized cities. These arrest data will be obtained through the FBI's Uniform Crime Report program. Unfortunately, it does not appear that the data that would enable comparative analysis of citation ratios exists, so levels of disparity in civil infractions will only be compared across violation categories within Seattle.

The comparative analysis described above will enable the analyst to identify enforcement practices that are characterized by levels of disparity that are high relative to other Seattle enforcement practices and/or to those found in other mid-sized cities. Based on these results, the analyst will identify the Seattle enforcement practices that have the greatest disparate impact on people of color. The analysis described above will also enable to analyst to identify the practices that are characterized by low levels of disparity.

- 4) **Understanding the Practices that Produce Disparities:** A fourth step in the procedure is identification of the drivers of the practices in question. To begin, the analyst will identify geographic and temporal patterns in these practices, and identify the nature of the investigations through which the relevant stops, citations or arrests occur. For example, this analysis will reveal whether these practices are concentrated in particular geographic locales or are mainly conducted during particular shifts. It will also identify the circumstances in which the practices take place, and whether, for example, police enforcement is typically driven by requests from neighbors or by some other process. A similar analysis of practices that do not have disparate impacts may also be conducted in order to identify practices that may mitigate disparate impact.

Once this basic understanding is in place, interviews with officers working in the relevant units, their supervisors, and neighborhood stakeholders will be conducted. These interviews will identify the problem that SPD personnel and community members are attempting to resolve through the use of the enforcement practice in question, as well as the drivers of the practice in question. This analysis will inform the identification of alternatives as described below.

- 5) **Identification of Alternatives:** The final step in the analysis is the identification of alternative practices that will reduce racial and ethnic disparities in stops, citations and arrests. These alternatives may reduce disparate impact by either addressing the problem in a different way or by de-emphasizing the practice in question. The analyst will draw on interviews with SPD personnel, community members, and other stakeholders as well as analyses of practices that do not produce disparate impacts in order to generate a number of possible alternatives. These alternatives will be evaluated in terms of their capacity to meaningfully address the problem and addresses public safety concerns in a way that also reduces disparate impact. These alternatives will be presented to a wide range of stakeholders for their consideration.
- 6) **Follow Up Analyses:** Follow-up analyses will assess the comparative impact of any alternative practices adopted as a result of the application of this procedure. To begin, the racial and ethnic composition of those stopped, cited and arrested and disparity ratios will be recalculated the year following the implementation of the alternative practices. These will be compared against similar indices for previous years in order to determine whether there has been a reduction of disparate impact. Interviews with SPD personnel and community stakeholders will also be conducted to ascertain whether the alternative approach is meeting public safety goals and other community needs.

Stops and Detentions Policy Recommendations

This is the specific policy language recommended by the CPC for stops and detentions

1. Officers Shall Not Seize Subjects Without Reasonable Suspicion Or Probable Cause

This policy prohibits *Terry Stops* when an officer lacks reasonable suspicion that a subject has been, is, or is about to be engaged in the commission of a crime.

Searches and seizures by officers are lawful to the extent they meet the requirements of 4th Amendment and Washington Constitution Article 1 Section 7. A *Terry Stop* is a seizure for investigative purposes. A *Terry Stop* must be based on reasonable suspicion and documented using specific articulable facts as described in this policy.

Officers must have independent justification for actions such as applying handcuffs, drawing a firearm, or transporting a subject to a police facility. Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may change a *Terry Stop* into an arrest requiring probable cause.

2. Officers Must Distinguish Between Voluntary Contacts And *Terry Stops*

a. Voluntary Contacts Defined

- ◆ *Social Contacts*: A voluntary, consensual, non-seizure encounter between the police and a subject with the intent of engaging in casual and/or non-investigative conversation. The subject is free to leave and/or decline any of the officer's requests at any point; it is not a seizure. The officer must not act in a way which would cause a reasonable person to believe they were obliged to answer the officer's questions or follow any other directions by the officer.
- ◆ *Non-Custodial Interviews*: A voluntary and consensual investigatory interview that an officer conducts with a subject during which the subject is free to leave and/or decline any of the officer's requests at any point. It is not a seizure.

*The United States Supreme Court has held that questioning by law enforcement officers remains consensual until a reasonable person would believe that he or she could not leave the presence of the officers or until he or she refuses to respond to their inquiries and the police take further action.

b. Terry Stops Defined

- ◆ *Terry Stops*: A brief, minimally intrusive seizure of a subject (short of arrest) based upon articulable reasonable suspicion in order to investigate possible criminal activity. The stop can apply to people as well as to vehicles. The subject of a *Terry Stop* is not free to leave. A *Terry Stop* is a seizure under both the State and Federal constitutions.
 - 1) *Reasonable Suspicion*: Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct. See *Terry v. Ohio*, 392 U.S. 1 (1968).

- a. The reasonableness of the *Terry Stop* is considered in view of the totality of the circumstances and the officer's training and experience, and whether the officer was following standard procedures and practices in effectuating the stop.
- b. Reasonableness of the suspicion must be measured by what the officer knew *before* conducting the search.

*A *Terry Stop* is a detention short of an arrest. All other detentions must be made pursuant to the policies for arrests without a warrant (6.010-Reporting Arrests and Detentions), warrant arrests, (6.280-Warrant Arrests), traffic stops (16.230-Issuing Tickets and Traffic Contact Reports), or seizure of a person for a psychological evaluation (16.110-Mentally Ill Subjects).

3. Officers Shall Not Seize Anyone Without Reasonable Suspicion, Probable Cause, Or A Warrant

A *Terry Stop* is a seizure for criminal investigative purposes. To justify a *Terry Stop* under the Fourth Amendment and Washington State Constitution Article I, Section 7, an officer must be able to point to specific and articulate facts which, taken together with rational inferences from those facts, reasonably warrant that seizure. (Refer to Section 5.160-Citizen Observation of Officers).

4. Officers Will Limit The Seizure To A Reasonable Scope

Officers will ensure that subjects are seized for only that period of time necessary to effect the purpose of the stop and that any delays in completing the necessary actions are reasonable under the law.

Unless justified by the articulable reasons for the original stop, officers must have additional articulable justification for further limiting a person's freedom during a *Terry Stop*, such as:

- ◆ Taking a person's identification or driver's license;
- ◆ Ordering a motorist to exit a vehicle;
- ◆ Putting a pedestrian up against a wall;
- ◆ Directing a person to stand or remain standing, or to sit on a patrol car bumper or any other place not of his or her choosing;
- ◆ Directing a person to lie or sit on the ground;
- ◆ Applying handcuffs;
- ◆ Transporting any distance away from the scene of the initial stop, including for the purpose of merely identifying the subject;
- ◆ Placing a subject into the police vehicle;
- ◆ Pointing a firearm at a subject;
- ◆ Frisking a subject for weapons.

5. Officers Will Identify Themselves During All *Terry* Stops

When safe to do so, as early in the contact as possible, officers will inform the subject of the following:

- ◆ The officer's name;
- ◆ The officer's rank or title;
- ◆ The fact that the officer is a Seattle Police Officer;
- ◆ The reason for the stop;
- ◆ The recording of the person, if audio or video recording is turned on.

When releasing a person at the end of a stop, officers' will offer a reasonable explanation of the circumstances and reasons for the stop.

6. Officers Cannot Arrest Subjects Solely For Failure To Identify Themselves Or Answer Questions On A *Terry* Stop

- ◆ In general, subjects are not obligated to provide identification upon request and have the right to remain silent. However, there are certain statutory exceptions that do require the subject to identify himself or herself and which describe the officer's authority to take action if the person does not do so, such as:
 - ◆ When the subject, who is a driver, is stopped for a traffic infraction investigation (RCW 46.61.021);
 - ◆ When the subject is attempting to purchase liquor (RCW 66.20.180);
 - ◆ When the subject is carrying a concealing pistol (RCW 9.41.050).

7. Officers May Conduct A Frisk Or Pat-Down of a Stopped Individual For Dangerous Weapons Only If The Officer Reasonably Believes The Subject May Have A Weapon And is Presently Dangerous To The Officer Or Others

The purpose and scope of the pat-down frisk is to discover weapons or other items which pose a danger to the officer or those nearby.

- a) In addition to the basis for the stop itself, the officer must have a sufficient basis to believe an individual is armed, and be able to articulate the belief that the safety of the officer or that of others was in danger. The fact that the detention occurs in a high crime area is not in itself sufficient to justify a frisk/pat-down search. This may include but is not limited to:
 - ◆ Prior knowledge that the subject carries a weapon;
 - ◆ Suspicious behavior, such as failure to comply with instructions to keep hands in sight;
 - ◆ Observations, such as suspicious bulges, consistent with carrying a concealed weapon.

- b) The frisk for weapons is strictly limited to what is necessary for the discovery of weapons which might be used to harm the officer or others nearby. Generally, the frisk must be limited to a pat-down of outer clothing. Once the officer ascertains that no weapon is present after the frisk or pat-down is completed, the officer's limited authority to search is completed. (i.e.; the search must stop).

8. During A *Terry Stop*, Officers Will Limit The Seizure To A Reasonable Amount Of Time

Subjects may be seized for only that period of time necessary to affect the purpose of the stop. Any delays in completing the necessary actions must be objectively reasonable.

Officers may not extend a detention solely to await the arrival of a supervisor.

9. Officers Shall Not Use Traffic Violations As A Pretext To Investigate Unrelated Crimes For Which The Officer Lacks Reasonable Suspicion

Officers will only conduct traffic stops based on a reasonable suspicion that a driver has committed a traffic infraction (see Section 16.230 – Issuing tickets and Traffic Contact Reports).

10. Officers Must Document All *Terry Stops*

Officers must be able to clearly articulate the objective facts they rely upon in determining reasonable suspicion.

- ◆ Officers must document all *Terry Stops* and shall submit the required documentation of the stop to their supervisor by the end of the shift, unless their supervisor approves an extension of time not more than seventy-two (72) hours.

11. Supervisors Shall Review The Documentation Of *Terry Stops*

Absent extenuating circumstances, by the end of each shift, supervisors will review their officers' reports that document the *Terry Stops* made during the shift to determine if they were supported by reasonable suspicion and are consistent with Seattle Police Department policy, federal and state law.

12. Implementation Procedure

- a. SPD shall collect the data recorded per Section 10 of this policy in such a way that allows analysis of stops and detentions in terms of:
 - i. original and subsequent bases for the stop or detention;
 - ii. whether an arrest or citation resulted; and
 - iii. demographic information pertaining to the suspect that is collected in the GO report or citation.

In-Car Video Recordings Policy Recommendations

This is the specific policy language recommended by the CPC for in-car video recordings

Overview and Goals

The CPC's goal is to ensure SPD adoption of policies that enhance its In-Car Video (ICV) practices. The CPC has prioritized this issue so as to align with SPD's schedule for acquisition, installation and training for its new ICV system. All SPD patrol vehicles will have the new system in place by the end of September, 2013, and this document will help ensure that contractual, technical, training and policy issues are addressed by then.

In this document the CPC has made recommendations on 1) system capabilities; 2) general ICV policies; 3) ICV training plans and curricula; and 4) the ICV accountability system. In reviewing ICV system capabilities, policies and practices, and considering options for revising them, the CPC was guided by these intentions:

- To maximize the opportunity for appropriate video and audio recording of SPD and citizen interactions, while minimizing officer involvement in engaging ICV triggers that turn on recording.
- To focus not only on the intent of gathering evidence and promoting accountability, but also on ensuring appropriate (constitutionally protected) officer and public privacy.
- To review the cost/benefit equation of adding system elements, balancing the need to obtain the most consistent, useful and searchable information with budget impacts and other pending priorities (e.g. creating or retaining too much video can significantly increase cost but with little added value).

Key Policy Changes CPC Recommends

- Increase video retention and storage capabilities, ensure geocoding of video data for easier access, increase in-car video "triggers" to start ICV recording, and a single "sign on" system to begin recording without the need for an officer to manually turn on the system.
- Change current policy to presume that the audio system will be on whenever ICV is on.
- Change General Offense (GO) reports and Use of Force (UOF) reports to both indicate that an event has been recorded or to fully explain any special circumstances that caused an event NOT to be recorded.
- Change overall ICV program management to have one leader in SPD responsible for ICV oversight.
- Add annual accounting for proper ICV usage via documented ICV audit and accountability plan, with the need for active monitoring by sergeants and precinct captains as part of supervisory responsibilities.
- Add an annual documented training and "refresher" schedule for all SPD officers.

Specific Recommendations

System Capabilities

1. Video Retention

The City Auditor recommended that SPD prioritize procurement of technology and equipment that enable reliable creation and retention of ICV recordings. All videos have been moved to SPD's new COBAN storage system and the Department has increased its video retention schedule to 1,280 days.

The CPC concurs with City Auditor recommendations.

2. Video Triggers

The ICV system currently triggers recording with activation of car lights and officer microphone. The new system will also trigger recording with speed thresholds and in crash situations. Additionally, the new system features "single sign-on" at ignition, which saves the officer a step (and time) from having to turn on and wait for the computer to "boot". Once the vehicle is on, the officer will simply tap his or her badge and log-in.

The CPC supports the "single sign-on" and use of the light, microphone, speed and crash triggers.

The CPC requires the disclosure of the specific speed threshold from SPD prior to September 20, 2013 and if it is set only for driving in the city (vs. highway driving). The CPC will take a position on revising the threshold upon learning speed specifics.

The CPC does not support additional video triggering at car ignition, via GPS, or door, siren, or rifle lock release triggers for these reasons:

- a) Video triggering at ignition—with continuous video and no shut off—would result in voluminous captured data, much of it not relevant, would be difficult to monitor and retrieve. Among other reasons for not supporting ignition triggering, "power on" triggering would result in "orphan" videos not associated with a specific officer. An ignition trigger has significant cost and video production impacts compared to other triggers and will not result in better data capture.
- b) Too many concerns have been raised that GPS triggering could have profiling implications, and again would not result in better data capture.
- c) Door triggering—either on all or particular doors—requires costly wiring of patrol cars, and would also result in voluminous captured data, much of it not relevant.
- d) The added value of siren triggering is quite limited since there are very few times, if any, that the siren would be activated for any length of time without lights being on. "Lights on" already triggers recording. The costs of siren triggering which require the wiring of each patrol car likely outweigh any additional benefits of this trigger.

- e) There are a limited number of shotgun and rifle officers and they are not always assigned to the same patrol car. Therefore, requiring this trigger would be both costly since it would require all patrol cars to be wired, and confusing, as it is also difficult to wire vehicles to trigger only when the weapon is removed (rather than placed back) in the patrol car. If a call warrants deployment of a shotgun or rifle, the incident highly likely to be subject to recording per policy with other recommended triggers.

3. GPS Tagging

SPD's new system will allow geocoding (GPS tagging) of audio and video recordings.

The CPC supports geocoding because it helps search by specific location the recordings of incidents. Without geocoding it is sometimes difficult to identify and retrieve recordings.

General Policy Changes to SPD 16.090 – In-Car Video Systems

1. **Section 4: Exceptions to Activation** - The current policy identifies the types of law enforcement activity that require manual ICV activation. It currently states: "*Employees will activate the ICV to record enforcement-related activity, unless doing so would jeopardize officer or public safety.*"

The CPC requested change is: "*Only emergent threats with dire consequences to officer or public safety shall prevent the activation of the ICV. If an officer is prevented from immediately activating ICV, it shall be activated as soon as practical in the emergent situation, with thought given to the needs to do so with haste and urgency. This should be reflected in changes to training curricula immediately.*"

2. **Section 7: Re-activation of Audio** - The current policy states: "*The audio recording must operate simultaneously with the video camera when the ICV system has been activated to record an event, even if the event itself is no longer within view of the camera. Certain conversations need not be recorded - conversations with Confidential Informants, and conferring with fellow employees or sergeants for strategic or tactical purposes, or personal conversations.*"

The CPC requested change is: "*It is presumed that the audio re-coding system will be on at all times the ICV system is on. Only emergent threats with dire consequences to officer or public safety, or conversations with confidential informants shall prevent the activation audio recording. If an officer is prevented from immediately activating audio, it shall be*

***activated as soon as practical in the emergent situation, with thought given to the need to do so with haste and urgency. This should be reflected in changes to training curricula immediately.*"**

3. **Section 5: Notification of Recording** - The current policy states: "*Employees shall notify others that they are being recorded as soon as practical.*" This new policy presumably addresses previously identified issues about whether the notification requirements needed clarification.

The CPC does not propose any changes.

- 4. Section 9: Add Documentation of Non-Recording** – The current policy section addresses the OPA Auditor’s recommendation that each relevant General Offense (GO) report and Use of Force (UOF) report indicate that the event has been recorded. It does not address the OPA Auditor’s recommendation (an issue also identified by the City Auditor and the CPC) that if the event was not recorded and per policy would appear to have been required, documentation should note why it was not recorded (e.g., equipment failure, too far away from vehicle, etc.).

The OPA Auditor made this recommendation to improve transparency for the public and to avoid allegations that then require OPA investigations in order to determine why there was not ICV for an interaction.

The CPC requested change is: “The policy, forms (if necessary) and training on documentation of ICV need to be revised immediately to include documenting on GO and UOF reports the rationale for NOT using ICV.”

- 5. Other Agencies** – Previously there was an issue of SPD working with other agencies without ICV and its responsibility for using ICV. This issue is now moot. SPD has verified that all marked DOC vehicles now have ICV and most other police agencies do as well (local and county police and sheriff units). Current SPD policy mandates recordings and does not distinguish between how primary and backup units are to operate.

The CPC does not propose any changes.

Changes Regarding Training

- 1. Training Plan - A Documented ICV Training Plan Is Needed.**

The CPC has asked SPD to provide more detail as to how they will ensure that all officers are trained in the use of the new equipment – i.e., what’s the training plan, who is monitoring it, is previous training considered sufficient for some, what mechanisms are in place to track who has had the past training and who needs to take it? Who takes the e-training and who receives in-person training? What other ICV training is being conducted, e.g. in-person, supervisory and roll call? How will training be reviewed for effectiveness?

The CPC has been informed by SPD that “the ONLY training is the e-Learning module which has been fully deployed with notice to all affected commanders AND that the training is mandatory for all personnel in their command for the newly installed equipment.” This does not address how and when each and every officer will be trained, and how SPD will assess if the training is effective. **The CPC would like to see a documented training plan by October 30, 2013.**

CPC has also been informed by SPD that: “the Education & Training Section (ETS) is monitoring the training and will prepare a report for distribution via the chain of command once the installation period is completed. Additionally ETS will distribute an updated report based on Bureau Command input as it is anticipated that not all personnel will be trained commensurate with the installation program.” **The CPC has no real idea what this means - This does not address how and when each and every officer will be trained, and how SPD will assess if the training is effective.**

CPC has been told by SPD that: “previous training is only sufficient for the existing equipment, not the new equipment once it has been installed. Previously trained personnel are only authorized to use the existing equipment until such time as it is replaced during the installation period. Those personnel are mandated to take the e-Learning module for future use of the new equipment”. ***Again, the CPC has no real idea what this means - This does not address how and when each and every officer will be trained, and how SPD will assess if the training is effective.***

CPC has been informed by SPD that: “The ETS maintains the training records for Department training which includes the ICV training. The application that is used by the ETS draws from the PEDS database for all Department personnel. The chain of command, based on the assignment of the individual employee and the availability of the equipment will determine who is required to take the training.” ***Again, the CPC has no real idea what this means - This does not address how and when each and every officer will be trained, and how SPD will assess if the training is effective.***

2. Training Curricula

Overall there is no set schedule for revisions to e-Learning provided to officers as additional revisions and updates are required. ***The CPC believes these should be implemented no more than 30 days after the need for a change is identified.***

- a. **Quality of the Video and Audio** – The OPA Auditor had recommended that training and policy should incorporate information that helps officers ensure quality video and audio recordings, as used to be taught in the longer version of the in-person training SPD did in past years (e.g. where to position the subject, volume, turning down radio in car, lighting, etc.). ***To be clear, the CPC agrees that technical compliance (“I turned it on”) is not the goal; providing the most useful video and audio that circumstances and safety allow is the goal. The “e-training” needs an additional module that covers how to best enhance the quality, and a reminder that officer safety should not be put at risk to capture video (e.g., don’t leave a subject unattended to go move the vehicle to capture video). This should be included by October 30, 2013.***
- b. **Supervisory Training** – ***The CPC also requests*** that the “e-training” should include a module for supervisory responsibilities related to ICV as raised by the OPA Auditor, (addressing use of video for coaching, review of GORs, review of quality, video sampling, getting equipment problems addressed, etc.). As noted, the Department also still needs to provide the schedule showing how and when this training will occur – since there is no schedule, how can we be satisfied that FTOs and those in the training unit are all trained, since they are training others? ***All of this should be accomplished by October 30, 2013.***
- c. **Improving Performance and Accountability** – ***The CPC also requests*** an overview of the ICV accountability system in the general training material, providing information on how data will be used for supervisory purposes *and* to track overall Department performance.

In addition, use of video for performance purposes still appears to be artificially constrained by the original Guild concerns and ULP settlement agreement. As noted by the OPA Auditor, there is a need to maximize value of videos for coaching, mentoring and training.

The "e-training" over-emphasizes how video review is limited by reciting the ULP settlement rather than explaining how valuable ICV can be for community trust, evidence, validation of officer actions, helping improve performance (as other professions use it for) - accenting the positives.

Again, the CPC wishes to see this implemented by October 30, 2013.

- d. **Multiple Officers – The CPC requests** that Training and policy clearly state the requirements of multiple officers and ICV usage. In addition to the primary responding officers, and that when additional cars respond, they should make an effort to place the car/camera in way that captures quality recordings where possible and prudent. This should be added to the e-training module noted just above.
- e. **Uploading – The CPC requests** "e-training" clearly tell officers what to do if recordings from prior shift have not been uploaded. SPD states this may not be needed since uploading will occur automatically at log on by another officer. Pre-checks when logging on may indicate if a hard drive device has not been returned to the car but training should also show officers that when they upload in the precinct, the hard drive should be returned to the car.
- f. **General Offense Reports – The CPC requests** that the "e-training" should show where or how to note in GO reports that a video has been uploaded OR if it was not uploaded, why it was not uploaded.

Other Issues

- 1. **ICV Management** – The OPA Auditor had highlighted that SPD needs a single point of responsibility for managing ICV, assigned by the Chief. The Auditor was concerned that since SPD began using ICV, responsibilities have been divided among IT, policy, training and legal staff with no one primarily responsible, making accountability and integrated management very difficult. ***The CPC concurs that there should be one point of responsibility for a project of this scale and importance and urges the Chief of Police to appoint such by October 30, 2013.***
- 2. **Audit/Accountability Plan** - A documented ICV audit/accountability plan is needed. The CPC workgroup has asked SPD to provide information about its plan to audit use of the new system and compliance with the revised policy, including:
 - a. What methodology will SPD use to monitor officer and sergeant compliance with ICV policy?
 - b. What types of management reports, metadata, or sampling will the new system provide/allow that would give SPD supervisors a way to provide oversight that is effective, yet not overly time or cost intensive?
 - c. What accountability mechanisms are in place to ensure that sergeants comply with their oversight responsibilities?
 - d. And what are the consequences for lack of officer or supervisor compliance?

The CPC asks that an Audit Plan be available for review by October 30, 2013.

- 3. Electronic requests** - The City Auditor specifically recommended that SPD develop a standard electronic request form that includes all the information the Video Unit needs to conduct a search and that the Video Unit should be directed to develop a simple, uniform system for recording receipt and work performed on each request (see details in auditor summary). SPD reports that it is in final stages of developing an electronic form for internal document requests for ICV. However, SPD also states that "other SPD IT priorities prevent it from developing a similar tool for external requestors". ***That is not acceptable to the CPC. The request form should be in place by October 30, 2013.***